

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

APR 02 2009

MURANE & BOSTWICK
508 WEST 27TH STREET
CHEYENNE, WYOMING 82001
(307) 634-7500
FAX: (307) 638-7882

Heather A. Zadina

Stephan Harris, Clerk
Cheyenne

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

R&S WELL SERVICE, INC., a Wyoming)
Corporation, and MARKEL INSURANCE)
COMPANY, a Virginia Corporation)
Plaintiffs)
-vs-)
BRIAN THIESSEN, individually, and)
THIESSEN FARMS, a foreign corporation;)
Defendants.)

Case No.: 09cv72-B

DEFENDANT'S PETITION AND NOTICE OF REMOVAL

Defendant Brian Thiessen¹, through counsel, and pursuant to Fed. R. Civ. P. 81(c), U.S.D.C.L.R. 81.1, and 28 U.S.C. §1441, hereby petitions this Court to remove the civil action filed by Plaintiff in the Eighth Judicial District Court for Converse County, Wyoming to the United States District Court for the District of Wyoming. In support of this Petition, Defendant states as follows:

1. On February 9, 2009, Plaintiffs, R&S Well Service, a resident of the State of Wyoming, and its insurer, filed their Complaint against Defendants Brian Thiessen, an individual residing in Saskatchewan, Canada, and "Thiessen Farms" (see footnote, below). The Complaint was filed in State Court in the Eighth Judicial

¹ "Thiessen Farms" is an unincorporated, non-entity; a colloquial name used to identify certain parcels of farmland in Canada, wholly unrelated to the events alleged in Plaintiffs' Complaint and not a proper party to this suit.

Receipt # Le563
Summons issued
X not issued

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District Court of Wyoming. (See Plaintiffs' Complaint, Exhibit A, attached hereto and incorporated herein by reference).

2. The Complaint alleges that Defendant Brian Thiessen, negligently operated his vehicle causing property damage to Plaintiffs.

3. Defendant Thiessen was served with the Summons and Complaint at his residence in Canada on March 6, 2009.²

4. Defendant Thiessen has filed his Answer to the State Court action.

5. Jurisdiction and venue for the Eighth Judicial District Court is premised on the allegation that all acts alleged in Plaintiffs' Complaint occurred in the County of Converse, State of Wyoming.

6. The State Court action is removable pursuant to 28 U.S.C. §1441(a).

7. This Petition and Notice of Removal is filed within thirty days of receipt of the Summons upon Defendant in accordance with 28 U.S.C. §1446(b).

8. As required by 28 U.S.C. §1446(d) and Rule 81.1 U.S.D.C.L.R., Defendants is simultaneously filing a copy of this Petition and Notice of Removal with the Clerk of the Eighth Judicial District Court and all parties of record.

9. Defendant submits herewith the filing fee of \$350.00

10. The basis of removal is diversity of citizenship. 28 U.S.C. §1332 provides original jurisdiction of all civil actions where the amount in controversy

² The Return of Service filed with the Court notes that Brian Thiessen was served as an individual and "as the registered agent" for Thiessen Farms; however, as noted above, "Thiessen Farms" is a non-entity unrelated to the events in this suit and, *has no* "registered agent."

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exceeds \$75,000 and is between citizens of different states. Both requirements are met in this case.

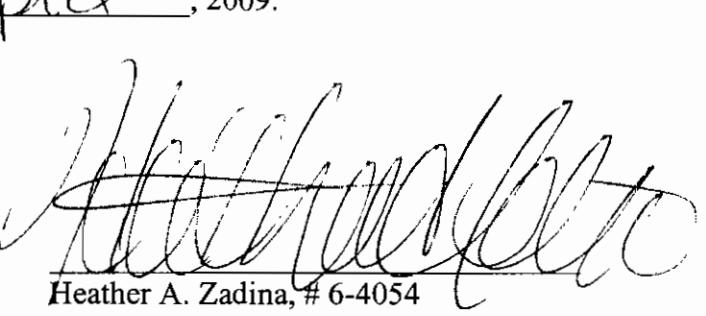
11. Regarding the amount in controversy, Plaintiffs have submitted a pre-suit demand well in excess of \$75,000. (See Exhibit B).

12. Accordingly, the State Court action is removable pursuant to 28 U.S.C. §1441. As set forth above, complete diversity of citizenship exists between Plaintiffs and Defendant Thiessen, and the amount in controversy exceeds \$75,000. In addition, this Petition and Notice of Removal meets the statutory requirements of 28 U.S.C. §1446.

WHEREFORE, Defendant respectfully requests that this Court enter its Order on Removal removing the State Court Action filed in the Eighth Judicial District Court, Converse County, Wyoming, to the United States District Court for the District of Wyoming.

Dated this 2nd day of April, 2009.

By:


Heather A. Zadina, # 6-4054

Murane & Bostwick, LLC

508 West 27th Street

Cheyenne, Wyoming 82001-3031

Phone: (307) 634-7500

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Attorneys for Defendant

MURANE & BOSTWICK
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CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of April, 2009, a true and correct copy of the foregoing **DEFENDANT'S PETITION AND NOTICE OF REMOVAL**, was served upon the following by placing a copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

Mark W. Gifford
Gifford & Brinkerhoff
243 South Park Street
P.O. Box 2508
Casper, Wyoming 82602
mark@giffordbrinkerhoff.com

Richard R. Rardin, #5-2888
Cozen O'Connor
707 17th Street, Suite 3100
Denver, Colorado 80202
rrardin@cozen.com
Attorneys for Plaintiffs

Barbara Cunstee

EXHIBIT A

STATE OF WYOMING) IN THE DISTRICT COURT
CONVERSE COUNTY) EIGHTH JUDICIAL DISTRICT
) CIVIL ACTION NO. 15389
)
R&S WELL SERVICE, INC., a Wyoming)
corporation, and MARKEL INSURANCE)
COMPANY, a Virginia corporation)
)
Plaintiffs,) COMPLAINT
) AND
vs.) JURY DEMAND
)
BRIAN THIESSEN, individually, and)
THIESSEN FARMS, a foreign corporation;)
)
Defendants.)
)

Filed for Record this 9
day of Feb A.D. 2009
Jo Winter, d/k/a
Clerk of the District Court
Converse County, Wyoming

Plaintiffs, by and through its attorneys, Cozen O'Connor, hereby complain as follows:

GENERAL ALLEGATIONS

1. At all times relevant Plaintiff R&S Well Service, Inc. ("R&S") is and was a Wyoming corporation with its principle place of business at 818 South 7th Street, Thermopolis, Wyoming, and was conducting business in Converse County, Wyoming.

2. At all times relevant, Markel Insurance Company ("Markel"), is and was a Virginia corporation, and was authorized to transact the business of insurance in the state of Wyoming.

3. At all times relevant, Markel provided a policy of insurance, insuring R&S, and its business and property.

4. Upon information and belief, and at all times relevant, defendant Brian Thiessen ("Thiessen"), resided in Canada, and owned and/or was employed with, and was acting within the course and scope of his employment with, defendant Theissen Farms, a Canadian company.

5. On or about November 9, 2007, an employee of R&S was driving a derrick truck northbound on Wyoming State Highway 59 within Converse County, Wyoming. Other employees of R&S were following the derrick truck in their crew truck. As the vehicles were approaching an intersection with a roadway, both vehicles signaled their intention to turn left onto the roadway.

6. State Highway 59 is a two lane highway at the intersection with the roadway onto which the R&S derrick truck was attempting to turn.



7. As the derrick truck was executing the left turn onto the roadway, a commercial vehicle owned by Thiessen and/or Thiessen Farms, and driven by Thiessen, was attempting to pass the R&S derrick truck and crew truck on the left in the southbound lane of Highway 59. While attempting to pass, Thiesen's truck collided with the R&S derrick truck damaging the R&S truck and its property.

8. As a result of the damage, and pursuant to its policy of insurance, R&S submitted a claim to Markel, and Markel has paid monies to or on behalf of R&S for some of the damage it incurred. As a result of the payment of those monies, Markel is contractually and equitably subrogated to the claims of R&S as a result of the accident.

FIRST CLAIM FOR RELIEF
**(Negligence and Negligence Per Se – Thiessen and
Thiessen Farms)**

9. Plaintiffs adopt and incorporate their General Allegations as if set forth in full.

10. Defendants Thiessen and Thiessen Farms owed a duty to R&S to operate its vehicle in a safe and reasonable manner and in compliance with the traffic statutes of the State of Wyoming.

11. Defendants breached that duty by not operating their vehicle in a reasonable and safe manner, including but not limited to the following:

a. Attempting to pass the R&S vehicles on the left when it was not reasonably safe to do so in violation of Wyoming Statute §31-5-217;

b. Failing to observe the movements and signals of R&S before attempting to pass it on the left;

c. Passing on the left of the R&S vehicles within 100 feet of an intersection in violation of Wyoming Statute §31-5-205.

12. As a result of defendants' breach, their vehicle collided with the R&S vehicle causing damage to the R&S vehicle and property. As a result of defendants' breach, R&S has suffered damages in the form of loss of business income.

13. Thiessen Farms is liable for the negligence of Thiessen under the doctrine of respondeat superior.

14. As a result of the damage, and pursuant to its policy of insurance, R&S submitted a claim to Markel, and Markel has paid monies to and/or on behalf of R&S for some of the damage it incurred. As a result of the payment of those monies, Markel is contractually and equitably subrogated to the claims of R&S as a result of the accident.

WHEREFORE, Plaintiffs R&S and Markel pray for relief as follows:

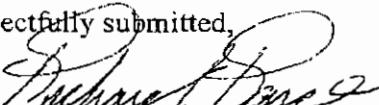
1. For compensatory damages in amounts to be determined at the time of trial;
2. For Plaintiffs' costs and expenses incurred herein;
3. For interest as allowed by law;
4. For attorney fees as allowed by law; and
5. For such other and further relief as this court deems just and proper.

**PLAINTIFFS DEMAND TRIAL BY JURY AND TENDERS THE JURY FEE
HEREWITH.**

Dated this 5th day of February, 2009.

Respectfully submitted,

By:



Richard R. Rardin, #5-2888

Cozen O'Connor

707 17th Street, Suite 3100

Denver, Colorado 80202

720-479-3900

Attorneys for Plaintiffs

R&S Well Service, Inc. and

Markel Insurance Company

EXHIBIT B



RECEIVED

JUL 14 2008

MURANE & BOSTWICK, LLC
ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

SUITE 3100 707 17TH STREET DENVER, CO 80202-3400
720.479.3900 877.467.0305 720.479.3890 FAX www.cozen.com

July 9, 2008

VIA US MAIL

Richard R. Rardin
Admitted in Colorado and Wyoming
Direct Phone 720.479.3915
rrardin@cozen.com

Ms. Heather A. Zadina, Esq.
Murane & Bostwick, LLC
508 West 27th Street
Cheyenne, WY 82001

Re: Traffic accident at Cnty Rd/milepost 15 and Wyoming Hwy 59, Converse County, WY
SGI Insured: Thiessen Farms/Brian Thiessen
Cozen Matter No.: 216698

Dear Ms. Zadina:

Please find enclosed a spreadsheet that breaks down the basis for R&S's lost income claim. The first column of the spreadsheet shows the total revenue generated by the damaged rig (\$792,040.34) per their utilization reports from the week ending 12/31/2006 up to the date of the accident, 44 weeks. The weekly revenues generated over those 44 weeks are shown in the rest of the columns. The last column (on the last page) showing \$18,000.92 is the average revenue generated per week over that time period. The rig was out of service for 7 weeks, which amounts to \$126,006.44 in lost revenue (\$18,000.92 X 7 weeks). Historically, 57.67% of revenue is applied to Operating expenses, and 19.15% is applied to General and Administrative expenses. Applying those percentages, R&S puts its lost net income/profit at **\$29,208.29**. This calculation arriving at this amount is broken down and enclosed herein. This amount is slightly higher than previously reported so R&S's demand is for **\$233,858.85**. You should have all the documentation in support of our claim. Please let me know if we can expect a response to our demand or whether we will need to initiated a lawsuit.

Thank you very much.

Sincerely,

Richard R. Rardin
By: Richard R. Rardin

RRR/mng

cc: Mr. Steve Traub (*via email only*)
Ms. Georgine Hyden (*via email only*)
Mr. Rick Raeder (*via email only; claim no.: C000033*)

